

Declaration of Eric M. Gaier, Ph.D.

GlaxoSmithKline¹⁷

Figure 13: KYTRIL (NDC 00029414901)

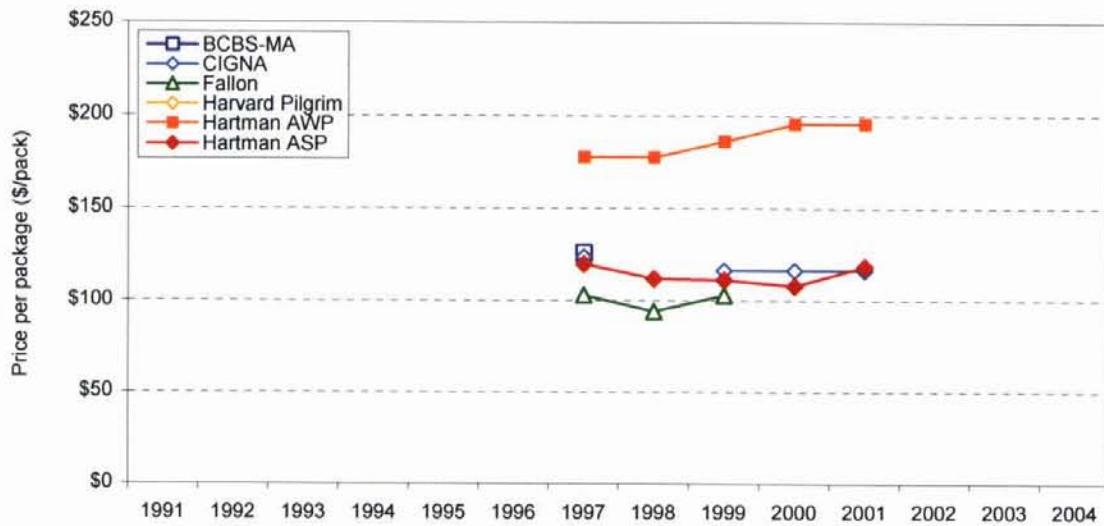
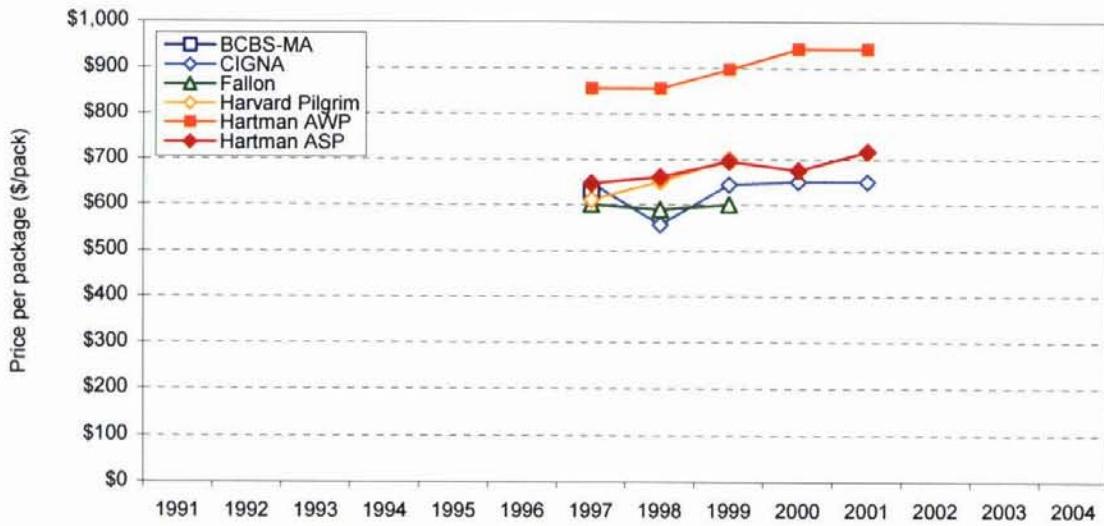


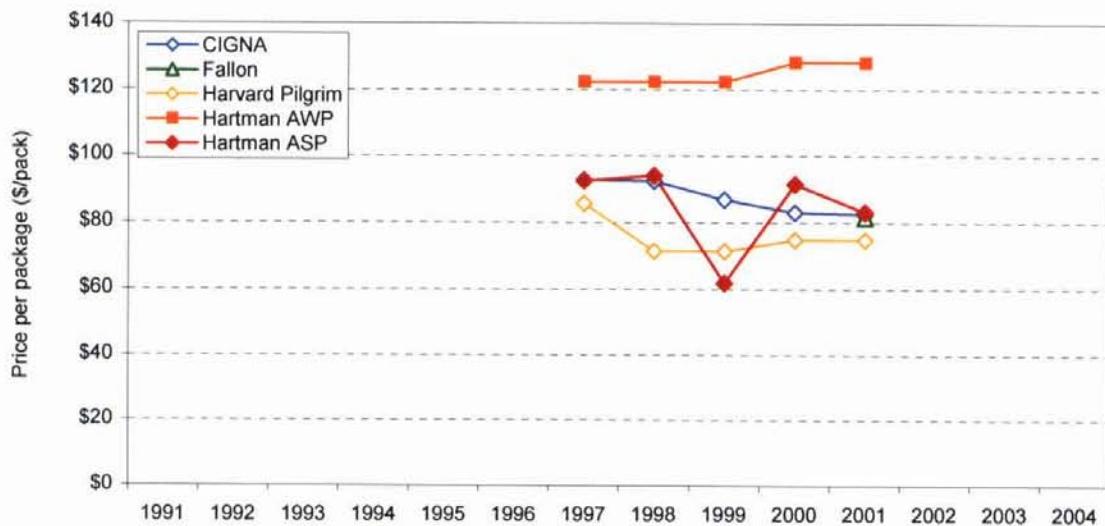
Figure 14: KYTRIL (NDC 00029415105)



¹⁷ Source: GlaxoSmithKline indirect sales tables.

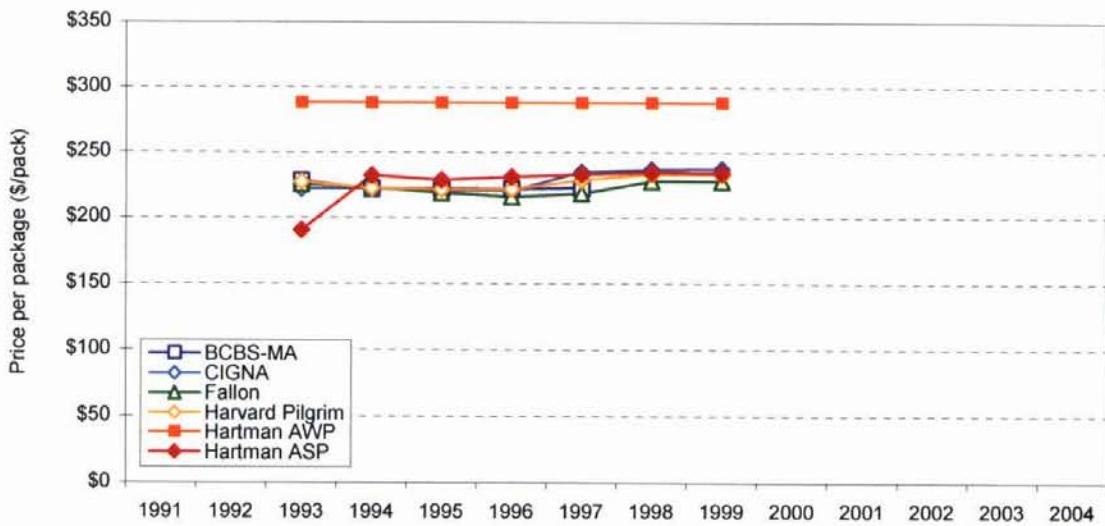
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Figure 15: ZOFRAN (NDC 00173044202)



Johnson & Johnson¹⁸

Figure 16: PROCRIT (NDC 59676030401)



¹⁸ Source: Johnson & Johnson indirect sales table.

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Figure 17: PROCRIT (NDC 59676031001)

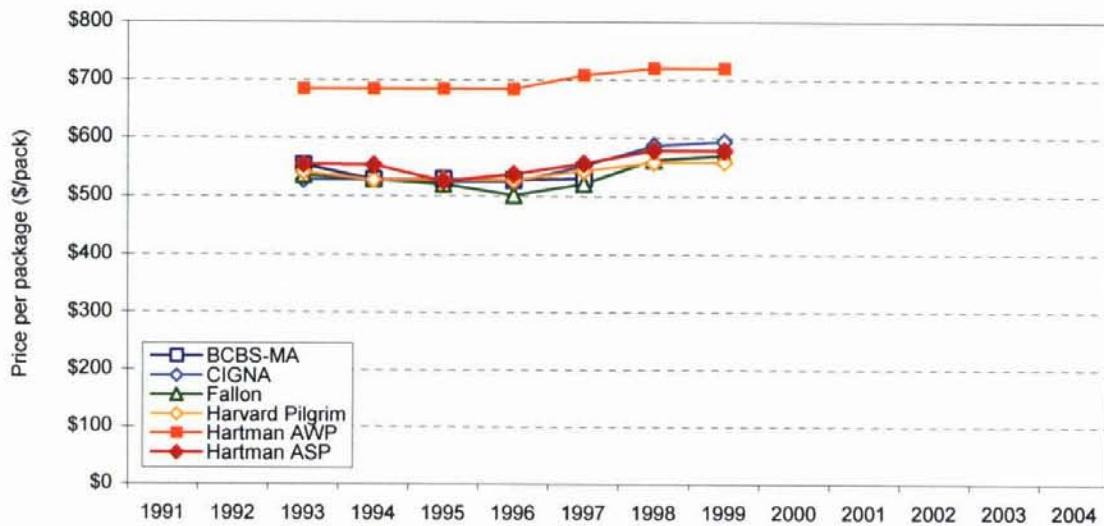
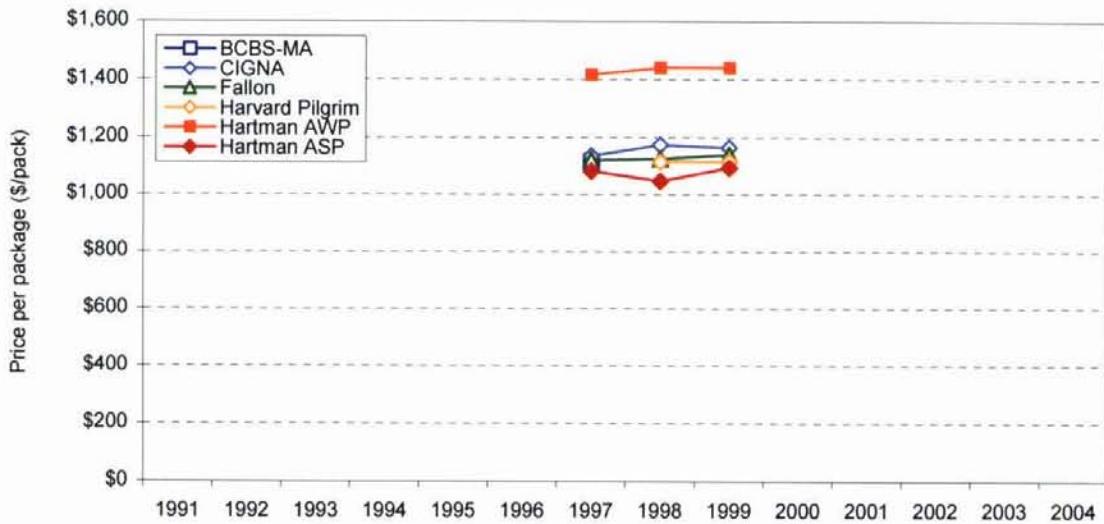


Figure 18: PROCRIT (NDC 59676032001)



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Schering-Plough¹⁹

Figure 19: ALBUTEROL (NDC 5993015008)

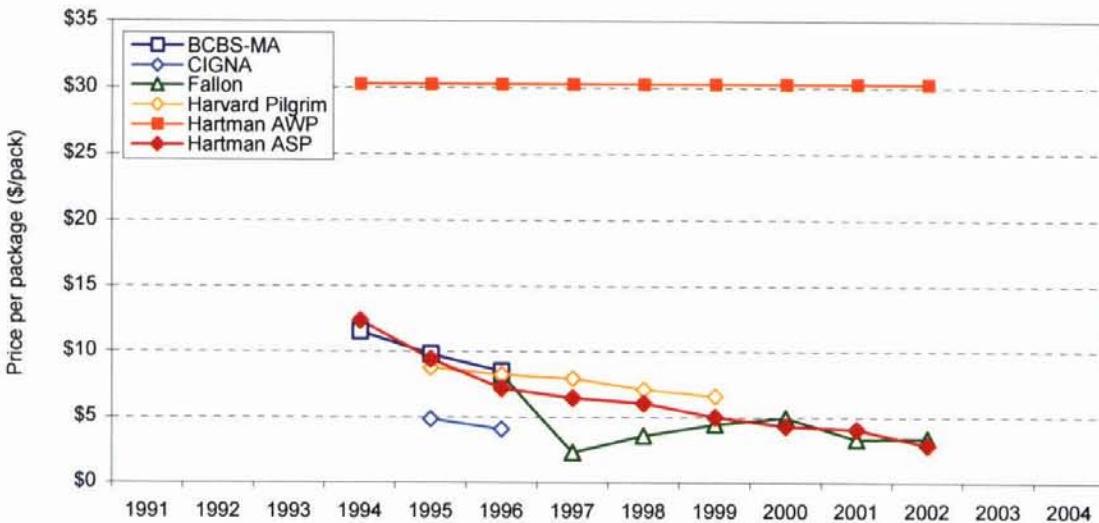
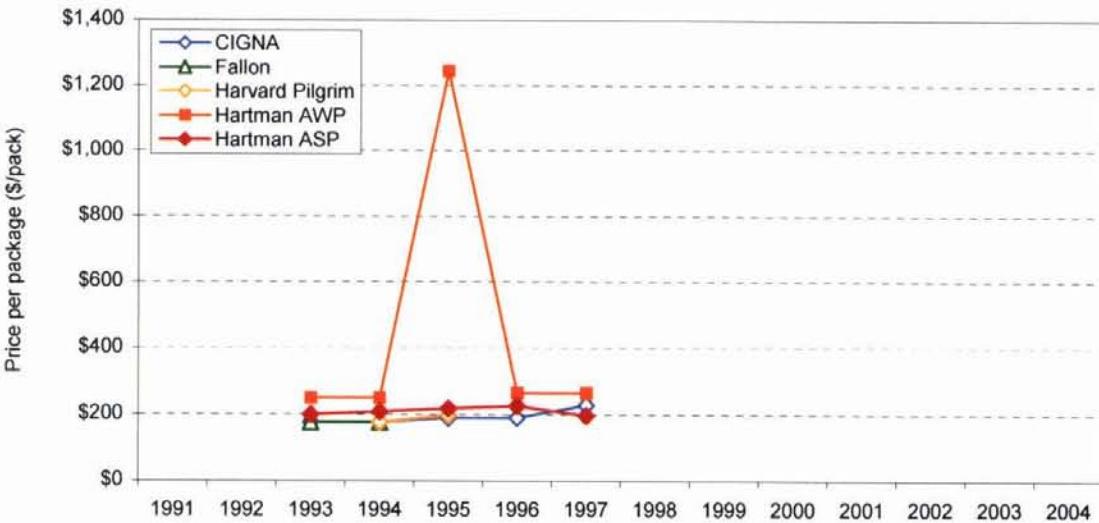


Figure 20: INTRON (NDC 00085076901)²⁰



¹⁹ Source: Schering-Plough indirect sales tables.

²⁰ Dr. Hartman's AWP of \$1,244.40 in 1995 appears to be incorrect. From January 1, 1995 until March 1, 1995, the AWP published in Medi-Span is \$248.88. Effective March 1, 1995 and continuing through the end of the year, the AWP published in Medi-Span is \$262.57. See Medi-Span Comprehensive Price History File.

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Figure 21: INTRON (NDC 00085118402)

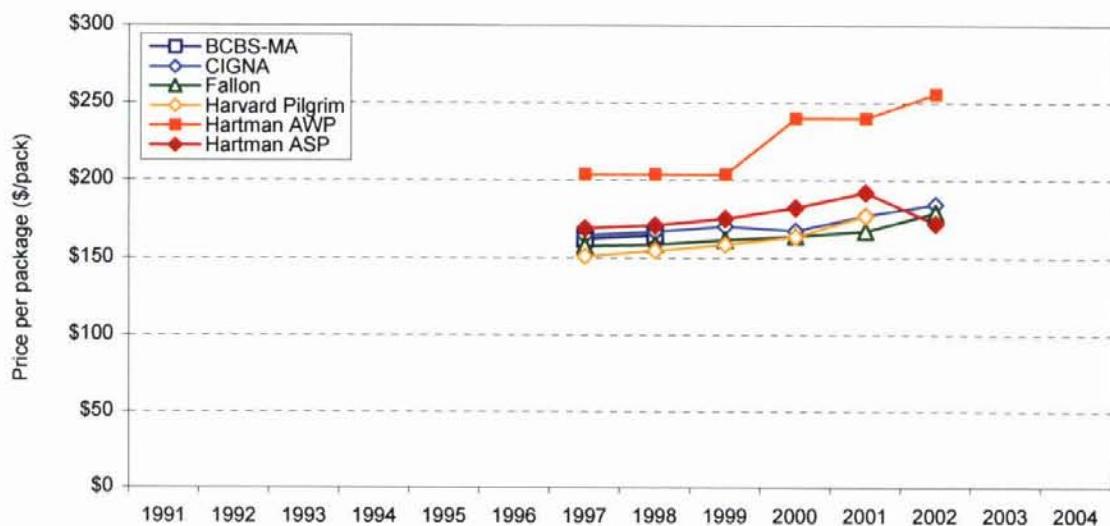
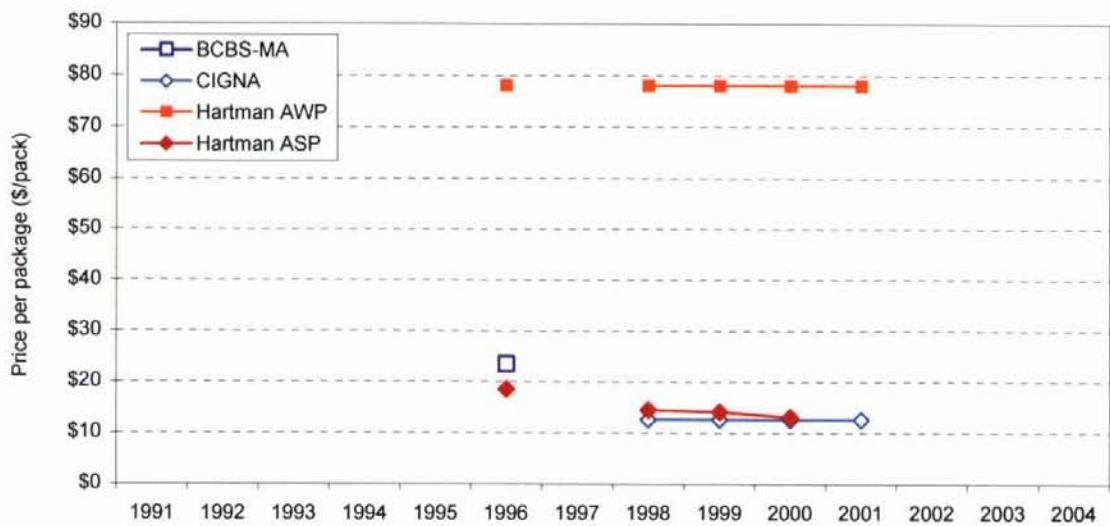


Figure 22: PERPHENAZINE (NDC 59930160501)



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Figure 23: PROVENTIL (NDC 00085020802)

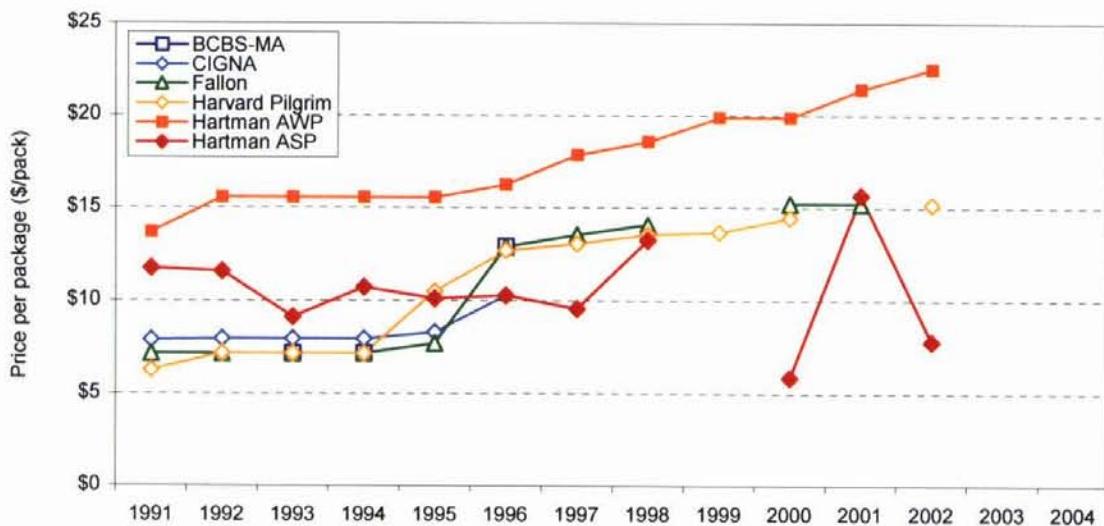
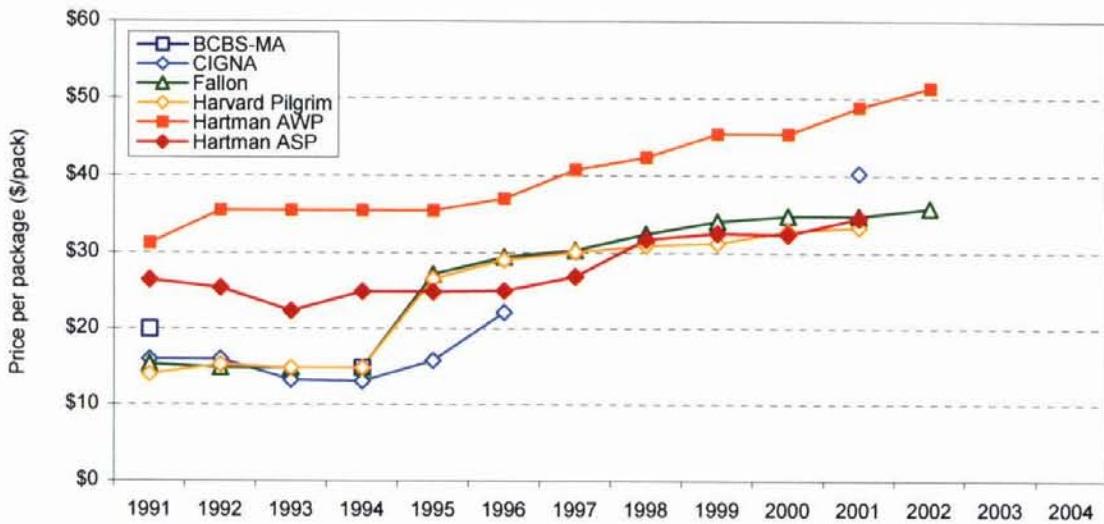


Figure 24: PROVENTIL (NDC 00085020901)



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Appendix C: Calculation of sales dollars and prices to Massachusetts TPPs

- (10) In this appendix, I describe the electronic source data and data processing I employ to identify relevant Massachusetts TPP entities and calculate the dollar volumes and prices they paid for physician-administered drugs. I also list the relevant purchasing entities and detail their relationships with the Massachusetts TPPs.

Electronic source data

- (11) I calculate dollar volumes and prices paid by Massachusetts TPPs using manufacturer chargeback sales data. Below, I list the data tables used for each manufacturer, along with the drugs and time periods for which data were available. I also list the fields used to calculate dollar volumes and prices and the fields used to identify relevant purchasing entities. These entities were identified using the combination of three types of fields: customer name, contract owner name, and state.

AstraZeneca

Data tables

- cntmgt_pulmicortresp_indirect_sales
- cntmgt_zoladex_indirect_sales
- AZ_Sales_Based_Customers.csv—produced by Dr. Hartman on February 3, 2006

Drugs included

- Pulmicort respules, Zoladex

Time coverage

- 1991–2004

Fields for calculating dollar volumes and prices

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- net_sales
- no_of_packages

Field for identifying relevant purchasing entities

- customer_name
- contract_owner
- state

Fields for identifying products

- product_ndc

Bristol-Myers Squibb

Data tables

- Indirect.txt

Drugs included

- Blenoxane, Cytoxan, Paraplatin, Taxol, Vepesid

Time coverage

- 1993–2002

Fields for calculating dollar volumes and prices

- chbk-adj-contr-prc
- chbk-adj-prod-qty

Fields for identifying relevant purchasing entities

- custname
- ownername
- custst

Fields for identifying products

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- chbk-ndc-prod-code

GlaxoSmithKline

Data tables

- Sales tables
 - cn_sales_v
 - tcbline
- Purchaser translation tables
 - cn_bu_v1
 - trpcustmst

Drugs included

- Imitrex, Kytril, Navelbine, Ventolin, Zofran

Time coverage

- 1997–2001

Fields for calculating dollar volumes and prices

- contr_sls_amt
- cont_prod_prc
- pkg_unit_qty
- prod_qty

Field for identifying relevant purchasing entities

- cust_name
- bu_nm
- hin_name
- bu_std_nm

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- owner_cust_name
- cust_state, dflt_st_cd

Fields for identifying products

- nwda_ndc11_no
- prod_nmbr

Johnson & Johnson

Data tables

- jj_imhc_combined_chargeback

Drugs included

- Procrit

Time coverage

- 1991–1999

Fields for calculating dollar volumes and prices

- amt_contract_price
- units

Fields for identifying relevant purchasing entities

- cust_name
- cust_state

Fields for identifying products

- ndc_no

Schering-Plough

Data tables

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- schering_chargeback_1991_1994
- schering_chargeback_1995_1998
- schering_chargeback_1999_2001
- schering_chargeback_2002_2004

Drugs included

- Albuterol, Intron, Perphenazine, Proventil, Temodar

Time coverage

- 1991–2004

Fields for calculating dollar volumes and prices

- extended_amount
- quantity

Fields for identifying relevant purchasing entities

- customer_name
- buying_group_name
- customer_state

Fields for identifying products

- ndc_no

Data processing

- Create purchaser table
 - Identify relevant purchasing entities using customer name, owner name, and state fields present in the manufacturer data
 - Identify purchases by Massachusetts TPPs and their related entities²¹

²¹ The following section details the entities I include in my analysis.

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- For payors other than CIGNA, a national health plan, I restrict my analysis to purchases in Connecticut, New Hampshire, New Jersey, New York, Massachusetts, Rhode Island, and Vermont.
- Create sales table
 - Pull sales data from manufacturer chargeback tables as specified above.
 - Limit selection to NDCs included in Dr. Hartman's damage analysis
- Merge sales table and purchaser table
 - Keep only sales data for relevant purchasing entities
- Merge manufacturer data with Dr. Hartman's AWP and ASP data
- For table 2, sum purchases by Massachusetts TPP and manufacturer
- For table 3, sum purchases by Massachusetts TPP and year
- For price graphs, calculate quantity-weighted purchase prices by year and Massachusetts TPP

Relevant purchasing entities

- (12) Table 4 below lists the customer/contracting entities appearing in the manufacturer chargeback data that I identify as being related to a Massachusetts TPP.

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Table 4: Purchasing entities related to top Massachusetts TPPs²²

TPP	Purchaser name from chargeback data	Relationship to TPP
BCBS-MA	HMO Blue	Health plan offered by BCBS-MA starting in 1992 ²³
BCBS-MA	Medical East	Staff model HMO owned by BCBS-MA from the late 1980's through 1997 ²⁴
BCBS-MA	Medical West	Staff model HMO owned by BCBS-MA from the late 1980's through 1997 ²⁵
BCBS-MA	Bay State Health Care, Inc	Merged with BCBS-MA in 1992 ²⁶
CIGNA	CIGNA Pharmacy	Offered as part of CIGNA's health plan ²⁷
CIGNA	Connecticut General Life Insurance Company (CG)	Merged with INA Healthplan to become CIGNA in 1982 ²⁸
CIGNA	Insurance Company of North America (INA Healthplan)	Merged with CG to become CIGNA in 1982 ²⁹
CIGNA	EQUICOR	Employee benefit plan purchased by CIGNA in 1990 ³⁰
CIGNA	Lovelace Health Systems, INC (Lovelace)	Integrated healthcare system which was a subsidiary of CIGNA from 1991-2003 ³¹

²² AIS Directory of Health Plans: 2004, MCOs table.

²³ http://www.bluecrossma.com/common/en_US/aboutUsIndex.jsp. See History section of this link for discussion of HMO Blue's beginnings in 1992. Also note that HMO Blue is a current plan offering of BCBS-MA. See http://www.bluecrossma.com/common/en_US/healthPlansIndex.jsp?levelOneDotFiveCategory=HMO&levelTwoCategory=HMO+Blue&targetTemplate=titleBodyAddLvl.jsp.

²⁴ See Mulrey deposition, pp. 12-13, 17. Also see http://www.bluecrossma.com/common/en_US/aboutUsIndex.jsp?repId=Repositories.PressReleases.2001PressReleases.pressRelease04052001.xml&levelTwoCategory=News+%28with+Archives%29&isLevelThreeSelected=true&targetTemplate=pressReleaseDetail.jsp&ipl=medicall:medical:east.

²⁵ See Mulrey deposition, pp. 12-13, 17. Also see http://www.bluecrossma.com/common/en_US/aboutUsIndex.jsp?repId=Repositories.PressReleases.2001PressReleases.pressRelease04052001.xml&levelTwoCategory=News+%28with+Archives%29&isLevelThreeSelected=true&targetTemplate=pressReleaseDetail.jsp&ipl=medicall:medical:east.

²⁶ Merged with BCBSMA in 1992. See <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=1st&navby=case&no=012586>. Also see article available through http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=pubmed&dopt=Abstract&list_uids=10133054&query_hl=2&itool=pubmed_docsum.

²⁷ http://www.cigna.com/health/consumer/service/pharmacy_claim.html.

²⁸ In 1982 Connecticut General Life Insurance Company and the Insurance Company of North America, two health care insurance carriers merged to form CIGNA. See <http://www.cigna.com/general/about/history.html>.

²⁹ <http://www.cigna.com/general/about/history.html>.

³⁰ <http://www.cigna.com/general/about/history.html>.

³¹ Cigna acquired 100 percent ownership of Lovelace in 1991 and sold the subsidiary to Ardent Health in

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TPP	Purchaser name from chargeback data	Relationship to TPP
CIGNA	RxPrime	PBM managed by CIGNA from 1992 through 2000 ³²
CIGNA	Tel-Drug	Mail order pharmaceutical company purchased to merge with RxPrime from 1993–2000 ³³
CIGNA	Healthsource	Health care company purchased by CIGNA in 1997 ³⁴
Fallon Community Health Plan (FCHP)	Fallon Clinic	Founded the Fallon Clinic Foundation which managed FCHP until 2004 ³⁵
Fallon Community Health Plan (FCHP)	Fallon Central Pharmacy (FCP)	Main pharmacy for the Fallon Clinic until 2002 ³⁶
Harvard Pilgrim Health Care (HPHC)	Harvard Community Health Plan (HCHP)	Staff Model HMO that merged with HPHC in 1994. Owner of Harvard Vanguard through 1997 ³⁷

2003. See <http://www.cigna.com/general/about/investor/release/10k20021231.html> and <http://www.ardenthealth.com/CustomPage.asp?PageName=Lovelace>. Also see <http://www.lovelacesandia.com/CustomPage.asp?guidCustomContentID=A89B6170-7BC2-4F3D-97A5-41F9BA70E1D5>.

³² <http://www.cigna.com/general/about/history.html> and http://www.equityleague.org/PDF/cigna_pharmacy_guide.pdf.

³³ <http://www.cigna.com/general/about/history.html>.

³⁴ <http://www.cigna.com/general/about/history.html>.

³⁵ Fallon Clinic is a healthcare provider organization, which runs medical centers, physician offices, ambulatory care centers, and other provider locations. See <http://www.fchp.org/about/index.aspx> and <http://www.fchp.org/brokers/qa.aspx#Anchor246>. Fallon Clinic founded The Fallon Clinic Foundation, a non-profit public charity, 1988. The Fallon Clinic Foundation governed Fallon Community Health Plan until 2004. See <http://www.bizjournals.com/boston/stories/2005/01/03/daily50.html> and <http://www.fallonclinicfoundation.org/ourstory/ourstory.aspx>. Each Fallon Clinic location can be called a Fallon Medical Center. For example, the clinic location in Auburn, MA can be called “Fallon Medical Center Auburn,” as shown in <http://www.fchp.org/SeniorPortal/Sales.aspx>. Also see <http://www.fallonclinic.com/internet/patients/index.aspx?PAGE=locations&LEVEL1=patients&LEVEL2=locations>.

³⁶ <http://www.fchp.org/brokers/resources/brokerEdge/BrokerEdgeFall02.pdf>.

³⁷ Harvard Community Health Plan was a health insurance carrier, founded in 1969, that merged with Harvard Pilgrim Health Care in 1994 and took on the name Harvard Pilgrim. <http://www.managedcaremag.com/archives/0002/0002.harvard.html> and <http://www.prospect.org/columns/kuttner/bk000109.html>.

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TPP	Purchaser name from chargeback data	Relationship to TPP
Harvard Pilgrim Health Care (HPHC)	Harvard Vanguard	Physician group, founded in 1969 by HCHP, spun off from HPHC in 1997 ³⁸
Harvard Pilgrim Health Care (HPHC)	Multigroup	Regional New England HMO acquired by HCHP in 1986 ³⁹
Harvard Pilgrim Health Care (HPHC)	Rhode Island Group Health (RIGH)	Staff model HMO acquired by HCHP in 1992, which closed in 1999 ⁴⁰

³⁸ <http://www.bizjournals.com/boston/stories/1999/12/20/story6.html>. Also see <http://www.harvardvanguard.org/about/faq.asp>. Also see <http://www.managedcaremag.com/archives/0002/0002.harvard.html>.

³⁹ Regional New England HMO acquired by Harvard Community Health Plan in 1986. <http://www.managedcaremag.com/archives/0002/0002.harvard.html>.

⁴⁰ http://findarticles.com/p/articles/mi_qa4100/is_200506/ai_n14715983. Also see <http://www.managedcaremag.com/archives/0002/0002.harvard.html>.

Declaration of Eric M. Gaier, Ph.D.

Appendix D: Supporting documentation

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESALE PRICE)	MDL No. 1456
LITIGATION)	
-----)	CIVIL ACTION: 01-CV-12257-PBS
)	
THIS DOCUMENT RELATES TO)	Judge Patti B. Saris
01-CV-12257-PBS AND 01-CV-339)	
)	Chief Magistrate Judge Marianne B. Bowler
)	
)	[FILED UNDER SEAL PURSUANT TO
)	COURT ORDER]
)	

DECLARATION OF RAYMOND S. HARTMAN
IN SUPPORT OF PLAINTIFFS' CLAIMS OF LIABILITY
AND CALCULATION OF DAMAGES

for the underlying spreads. Had the existence of the “mega-spreads” been perceived and understood by TPPs, those payors would have negotiated more aggressively than they did, leading to lower reimbursement rates. The lower reimbursement rates would have been related to the drug acquisition cost to the provider (or the ASP), which was well below the inflated AWP. Because the “mega-spreads” were not perceived, the reimbursement rates were negotiated relative to the artificially inflated AWPs, which were in many cases 50%-1000% above the actual provider acquisition costs.

E. The Economic Incentives Motivating the Alleged Fraudulent Pricing Scheme

16. For all three Sub-Classes, I discussed incentives and the opportunities for the alleged pricing abuses for physician-administered and Medicare Part B drugs in Attachment F to my September 3, 2004 Declaration in Support of Class Certification. Regarding this, the Court states (emphases added in bold):

“Because doctors are involved as both retailers and as prescribing physicians, manufacturers, realizing the purchasing power of physicians, provide them with rebates, **leading to large profits for the doctors on the prescription and administration of certain drugs**. These profits now allegedly comprise a large percentage of these doctors’ income; according to Hartman, two thirds of the income of practice-based oncologists comes from the mark-up on injectable drugs. ... Some experts have commented that ‘**the financial incentives created by this profitability played a large and problematic role in prescribing decisions**’ from 1998-2003 because ‘prescribers responded to these high margins by tending towards administering more (and more expensive) drugs than might be medically necessary or optimal for the health of the patient.’”

“Because physician-administered drug reimbursement has been based on a five-digit ‘J-Code’ system, which does not differentiate for strength, dosage and

invested would accrue to more members. This theory is supported by record evidence from Coventry, with more than 2.4 million lives insured, and plaintiff Philadelphia Federation of Teachers Health and Welfare Fund (“Teachers”), with between 55,000 and 65,000 insured lives.”

Mr. Young correctly states at ¶ 126 of his Rebuttal Declaration, “The level of consideration, including drug reimbursement that Payors negotiate to pay PBMs is impacted by the Payors leverage in those contract negotiations. Among the most significant sources of a Payor’s leverage is the volume of lives it represents. Large Health Plans representing millions of lives may have more leverage, for example, than small union benefit funds with relatively small representation. That leverage allows the larger Health Plans to negotiate deeper discounts, lower administrative fees, up-front payments, and preferential rebates and guarantees.”

While TPP size may be more important in negotiations regarding reimbursement rates for self-administered drugs, size will also matter for physician-administered drugs.

Michael T. Mulrey

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January 5, 2006

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1 THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3 *****

4 IN RE: PHARMACEUTICAL MDL DOCKET NO.
5 INDUSTRY AVERAGE WHOLESALE 01CV12257-PBS
6 PRICE LITIGATION
7 ***** DEPOSITION OF
8 THIS DOCUMENT RELATES TO: MICHAEL T. MULREY
9 ALL ACTIONS JANUARY 5, 2006
10 *****

11 C O N F I D E N T I A L

12 DEPOSITION of MICHAEL T. MULREY, a witness called on
13 behalf of the Defendant Johnson & Johnson pursuant to
14 the Federal Rules of Civil Procedure, before Judith
15 McGovern Williams, Certified Shorthand Reporter,
16 Registered Professional Reporter, Certified Realtime
17 Reporter, Certified LiveNote Reporter, and Notary
18 Public in and for the Commonwealth of Massachusetts,
19 at the offices of Robins, Kaplan, Miller & Ciresi,
20 L.L.P., 800 Boylston Street, Boston, Massachusetts
21 02199, on Thursday, January 5, 2006, commencing at
22 1:38 p.m.

Michael T. Mulrey

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Boston, MA

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	Page 10		Page 12
1	Q. Okay.	1	A. Worked for a company by the name of
2	A. -- as their first point of contact.	2	Barrow Industries, which is a wholesaler of
3	Q. Which department at Blue Cross/Blue	3	drapery and carpeting, I think is what it was, and
4	Shield of Massachusetts is responsible today for	4	that was from probably, oh, '91 -- excuse me --
5	actually drafting and executing contracts with	5	not '91 -- what did I say?
6	physicians for the reimbursement of drugs?	6	Q. '81?
7	A. Provider contracting.	7	A. The first one -- yes, '81. So that was
8	Q. Okay. How long have you been a manager	8	from '81 to '87.
9	of the provider reimbursement department?	9	Q. Okay. What did you do next?
10	A. October of 2000 through present.	10	A. Joined Blue Cross/Blue Shield in 1987.
11	Q. Just stepping back, if you would	11	Q. What was your initial position?
12	describe for the record your post high school	12	A. Senior financial analyst.
13	education and then your post high school	13	Q. What department were you in?
14	employment, leading up to October of 2000.	14	A. Finance department.
15	A. A graduate of St. Anselm's College, B.A.	15	Q. What were your responsibilities as a
16	degree.	16	senior financial analyst in the finance
17	Q. Any specialty?	17	department?
18	A. Business and economics.	18	A. We maintained all the financial
19	And then what was the second part of	19	information for our health centers back in the
20	that question again?	20	early -- late '80s, early '90s.
21	Q. I will follow up. After getting --	21	Q. What is a health center?
22	obtaining your B.A., have you obtained any other	22	A. They were the staff model HMOs that Blue
	Page 11		Page 13
1	educational degree?	1	Cross owned through their Medical East/ Medical
2	A. No.	2	West Corporation back in the late '80s, early
3	Q. Have you taken any courses relating to	3	'90s.
4	the reimbursement of physician-administered drugs?	4	Q. When you referred to a staff model HMO,
5	A. No.	5	did Blue Cross/Blue Shield of Massachusetts own
6	Q. Have you taken any courses relating to	6	both pharmacies and physician groups as part of
7	prescription drugs generally?	7	that HMO?
8	A. No.	8	A. I can tell you there were pharmacies
9	Q. What was your first employment after	9	within the physical buildings themselves, and the
10	graduating from college?	10	physicians themselves were, as far as I knew, they
11	A. Oh, God.	11	were salaried through Blue Cross or through
12	MR. HARRINGTON: If you need a minute to	12	Medical East/Medical West.
13	remember back that far, Mike.	13	Q. So the physicians were employees of the
14	THE WITNESS: It was a while.	14	--
15	(Laughter.)	15	A. Yes.
16	A. I am going to say it was probably with	16	Q. -- clinics?
17	Aetna as a claims examiner in the auto industry	17	A. Yes.
18	back then.	18	Q. And those clinics were owned by Blue
19	Q. Okay. For what years did you hold that	19	Cross/Blue Shield of Massachusetts?
20	position approximately?	20	A. Yes.
21	A. All right. Probably '79 to '81.	21	Q. Now I am sorry, was it Medical
22	Q. What did you do next?	22	East/Medical West you referred to?

4 (Pages 10 to 13)

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	Page 14		Page 16
1	A. Yes.	1	Q. So what in particular did you do with
2	Q. What is that?	2	respect to the maintenance of financial
3	A. That was a corporate name under which	3	information for the health centers?
4	the staff model HMOs were kind of set up under.	4	A. We compiled, you know, each health
5	Q. Was Medical East/Medical West a	5	center had its own kind of senior financial
6	subsidiary of Blue Cross/Blue Shield of	6	analyst that was in charge of compiling kind of
7	Massachusetts?	7	their financial statements at the close of each
8	A. Yes.	8	month, so your profit and loss statements, your
9	Q. A wholly-owned subsidiary?	9	balance sheets and such.
10	A. I'm not sure on that.	10	Q. All right. Those P & L's, were they
11	Q. Do you recall who was in charge of	11	consolidated with Blue Cross/Blue Shield's?
12	Medical East and West from the late '80s and early	12	A. Yes. We would send them up to
13	'90s?	13	corporate, and somewhere that would happen.
14	A. Each health center had its own executive	14	Q. Were you responsible for all of the
15	director. I am trying to think. There was a	15	health centers or particular ones?
16	senior group above them. Oh, I want to say it had	16	A. Just one that I worked out of.
17	its own separate kind of president, if you will,	17	Q. So you actually worked at the site?
18	for Medical East/Medical West. I just for the	18	A. Yes.
19	life of me can't think of the -- it was a man at	19	Q. Which one was that?
20	the time I was there -- his name.	20	A. At Braintree.
21	Q. Did this, the president of Medical East	21	Q. And what was the nature of that site?
22	and West, report in to someone in Blue Cross/Blue	22	Was it a hospital, a pharmacy, a clinic, all
	Page 15		Page 17
1	Shield?	1	three?
2	A. Yes. As far as I knew, yes.	2	A. It was physician offices. The pharmacy
3	Q. Do you know who that was?	3	was in the building as well, a small lab area.
4	A. No.	4	Q. Just to get the time frame down, this is
5	Q. How many health centers were there?	5	from 1987 until about what time?
6	A. There were eight, four in the west, four	6	A. About '91.
7	in the east.	7	Q. At this time did you move on to another
8	Q. And when you say east and west, are we	8	position?
9	talking east and west of Massachusetts?	9	A. Yes.
10	A. Yes. East and west. West of Worcester	10	Q. What was that?
11	and east of Worcester, if you will, hence Medical	11	A. I moved on to become a business analyst
12	East/Medical West.	12	under the HMO Blue information systems area.
13	MR. HARRINGTON: They are from out of	13	Q. Okay. Did Blue Cross/Blue Shield of
14	town.	14	Massachusetts spin off, sell, or otherwise disband
15	MR. HAAS: I am thinking Mississippi	15	the staff model HMOs in 1991?
16	versus -- actually I grew up in Lexington, so.	16	A. Not in '91, no.
17	MR. HARRINGTON: West of Worcester is	17	Q. Did there come a point in time that they
18	the west coast here.	18	did?
19	(Laughter.)	19	A. Yes.
20	THE WITNESS: So he knows where	20	Q. When was that?
21	Worcester is.	21	A. I think it was in the time frame of '96-
22	BY MR. HAAS:	22	'97.

5 (Pages 14 to 17)